

# OFFICE OF CHILD WELFARE PARENTAL DEFENSE

(Enacted by 2004 H.B. 268; Effective July 1, 2004)

## **63A-11-101. Title.**

This chapter is known as the "Office of Child Welfare Parental Defense."

## **63A-11-102. Definitions.**

For purposes of this chapter:

- (1) "Child welfare case" means a proceeding under Title 78, Chapter 3a, Juvenile Courts, Part 3 or 4.
- (2) "Contracted parental defense attorney" means an attorney or law firm authorized to practice law in Utah who is under contract with the office to provide parental defense in child welfare cases.
- (3) "Director" means the director of the office.
- (4) "Fund" means the Child Welfare Parental Defense Fund established in Section 63A-11-203.
- (5) "Office" means the Office of Child Welfare Parental Defense created in Section 63A-11-103.

## **63A-11-103. Creation of office.**

There is created within the Department of Administrative Services, the Office of Child Welfare Parental Defense.

## **63A-11-104. Office director --**

### **Appointment -- Duties -- Staff.**

- (1) (a) The executive director of the department shall appoint the director of the office with the approval of the governor.
- (b) The director shall be an attorney licensed to practice law in the state.
- (2) The director shall administer and enforce this chapter.
- (3) The director may employ staff.

## **63A-11-105. Office -- Duties, functions, and responsibilities.**

The duties, functions, and responsibilities of the office include the following:

- (1) to develop and enter into contracts with attorneys authorized to practice law in the state, as independent contractors, to serve as parental defense

- attorneys;
- (2) to provide assistance and advice to contracted parental defense attorneys;
- (3) to develop and provide educational and training programs for contracted parental defense attorneys; and
- (4) to provide information and advice to assist contracted parental defense attorneys to comply with their professional, contractual, and ethical duties.

## **63A-11-106. Annual report -- Budget.**

- (1) On or before the 1st day of October each year, the director shall report to the governor and the Child Welfare Legislative Oversight Panel of the Legislature regarding the preceding fiscal year on the operations, activities, and goals of the office.
- (2) The director shall prepare and submit to the executive director a budget of:
  - (a) the administrative expenses for the office; and
  - (b) the amount estimated to fund needed contracted parental defense attorneys and other costs.

## **63A-11-107. Records access.**

- (1) (a) Notwithstanding Title 63, Chapter 2, Government Records Access and Management Act, and except as provided in Subsection (1)(b), all records of a contracted parental defense attorney are protected and may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise.
- (b) All records of a contracted parental defense attorney are subject to legislative subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers.
- (2) Records released in accordance with Subsection (1)(b) shall be

maintained as confidential by the Legislature. The professional legislative staff may, however, include summary data and nonidentifying information in its audits and reports to the Legislature.

## **63A-11-201. Child welfare parental defense contracts -- Qualifications.**

- (1) The office shall enter into contracts with qualified parental defense attorneys to provide services for an indigent parent or parents who are the subject of a petition alleging abuse, neglect, or dependency, and will require a parental defense attorney pursuant to Section 78-3a-913.
- (2) Payment for the representation, costs, and expenses of legal defense counsel shall be made from the Child Welfare Parental Defense Fund as provided in Section 63A-11-203.
- (3) The parental defense attorney shall maintain the minimum qualifications as provided by this chapter.

## **63A-11-202. Contracted parental defense attorney.**

- (1) With respect to child welfare cases, a contracted parental defense attorney shall:
  - (a) adequately prepare for and attend all court hearings, including initial and continued shelter hearings and mediations;
  - (b) fully advise the client of the nature of the proceedings and of the client's rights, communicate to the client any offers of settlement or compromise, and advise the client regarding the reasonably foreseeable consequences of any course of action in the proceedings;
  - (c) be reasonably available to consult with the client outside of court proceedings;
  - (d) where attendance of a parental defense attorney is

- reasonably needed, attend meetings regarding the client's case with representatives of one or more of the Division of Child and Family Services, the Office of the Attorney General, and the Office of the Guardian Ad Litem;
  - (e) represent the interest of the client at all stages of the proceedings before the trial court;
  - (f) participate in the training courses and otherwise maintain the standards described in Subsection (3).
- (2) If the office enters into a contract with an attorney under Section 63A-11-105, the contract shall require that each attorney in the firm who will provide representation of parents in child welfare cases under the contract perform the duties described in Subsection (1).
- (3) (a) Except as otherwise provided in Subsection (3)(b), a contracted parental defense attorney shall meet the standards developed by the director which may include:
  - (i) completion of a basic training course provided by the office;
  - (ii) experience in child welfare cases; and
  - (iii) participation each calendar year in continuing legal education courses providing no fewer than eight hours of instruction in child welfare law.
- (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the director may, by rule, exempt from the requirements of Subsection (3)(a) an attorney who has equivalent training or adequate experience.
- (4) Payment for the representation, costs, and expenses of the contracted parental defense attorney shall be made from the

Child Welfare Parental Defense Fund as provided in Section 63A-11-203.

**63A-11-203. Child Welfare Parental Defense Fund -- Creation.**

- (1) There is created a restricted special revenue fund known as the "Child Welfare Parental Defense Fund."
- (2) Subject to availability, the director may make distributions from the fund as required in this chapter for the following purposes:
  - (a) to pay for the representation, costs, expert witness fees, and expenses of contracted parental defense attorneys who are under contract with the office to provide parental defense in child welfare cases for the indigent parent or parents that are the subject of a petition alleging abuse, neglect, or dependency; and
  - (b) for administrative costs pursuant to this chapter.
- (3) The fund consists of:
  - (a) appropriations made to the fund by the Legislature;
  - (b) interest and earnings from the investment of fund monies;
  - (c) proceeds deposited by participating counties pursuant to Section 63A-11-204; and
  - (d) private contributions to the Child Welfare Parental Defense Fund.
- (4) The state treasurer shall invest the money in the fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act.
- (5) (a) If the director anticipates a deficit in the fund during any fiscal year:
  - (i) the director shall request an appropriation from the Legislature; and
  - (ii) the Legislature may fund the anticipated deficit through appropriation but is not required to fund the

deficit.

- (b) If the anticipated deficit is not funded by the Legislature, the director may request an interim assessment to participating counties to fund the anticipated deficit.

**63A-11-204. Agreements for coverage by the Child Welfare Parental Defense Fund -- Eligibility -- County and state obligations -- Termination -- Revocation.**

- (1) A county legislative body may annually enter into a written agreement with the office to provide for payment of parental defense attorney costs out of the Child Welfare Parental Defense Fund.
- (2) An agreement for payment of parental defense costs from the fund shall provide that the county shall pay into the fund an amount defined by a formula established in rule by the office.
- (3) (a) Except as provided in Subsection (3)(b), after the first year of operation of the fund, any county that elects to initiate participation in the fund, or reestablish participation in the fund after participation was terminated, shall be required to make an equity payment, in addition to the assessment provided in Subsection (2).
- (b) The equity payment shall be determined by the office in accordance with office rules.
- (4) The agreement shall provide for revocation of the agreement for failure to pay assessments on the due date established by rule.
- (5) Any county that elects to withdraw from participation in the fund, or whose participation in the fund is revoked due to failure to pay its assessments when due, shall forfeit any right to any previously paid assessments by the county or coverage from the fund.